

EXHIBIT D

Fc4WgroC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

BENJAMIN GROSS, individually,
and on behalf of all others
similarly situated,

Plaintiff,

v.

14 Civ. 9438 (WHP)

GFI GROUP, INC., et al.,

Defendants.

-----x

New York, N.Y.
December 4, 2015
12:00 p.m.

Before:

HON. WILLIAM H. PAULEY III,

District Judge

APPEARANCES

JACK I. ZWICK
Attorney for Plaintiff
-and-

SCOTT AND SCOTT LLP
BY: JOSEPH P. GUGLIELMO
STEPHEN J. TETI

WACHTELL, LIPTON, ROSEN & KATZ
Attorneys for Defendant GFI

BY: PAUL K. ROWE
ADAM S. HOBSON
-and-

WILLKIE FARR & GALLAGHER LLP
Attorneys for Defendants
Heffron and Gooch

BY: TODD G. COSENZA

(Case called)

MR. ZWICK: Good afternoon, your Honor. Jack Zwick. With me are Steve Teti and Joseph Guglielmo, from the Scott and Scott firm.

MR. ROWE: Your Honor, Paul Rowe of the Wachtell Lipton firm, for defendant GFI Group Inc., and with me is my colleague Adam Hobson. Also at counsel table is Todd Cosenza of the Willkie Farr firm, representing the individual defendants.

THE COURT: Good afternoon. This is oral argument. Do you want to be heard, Mr. Rowe?

MR. ROWE: Yes, I do, your Honor. Thank you.

Your Honor, as our papers indicated, we have four grounds on which we seek dismissal. Just to recount them quickly. One is a failure of the plaintiffs to plead loss causation. One is failure to properly identify and explain why the three statements they identify as supposedly being misleading are actually misleading. The third is a reliance point, which sometimes is called for shorthand purposes puffery, but I think it's more accurate to describe it as part of the long line of Second Circuit cases that simply say that some statements by corporate defendants are too general and too vague and do not refer to specific external facts and so can't support an inference of reliance. The fourth ground I would generally call the Santa Fe ground. In the Second Circuit, the

1 case that most closely resembles the application of the Supreme
2 Court's 1977 decision in Santa Fe to a case like this is the
3 Field v. Trump case. And I'd like to address each of them, but
4 of course, if your Honor wants me to focus on one or two, I'm
5 happy to do that.

6 On July 30 of last year, GFI announced that it had
7 entered into a merger agreement in which all GFI shares would
8 be exchanged for shares of the company that owns the Chicago
9 Mercantile Exchange, a large public company, known as the CME
10 Group. This transaction was done or was going to be done, the
11 contract to do it was signed at a price, if you will, in terms
12 of an exchange ratio for the Chicago Merc shares that
13 represented a 46 percent premium to the trading price of GFI
14 shares.

15 Five weeks later, a third party, BGC Partners Inc.,
16 announced that it would make a hostile competing bid at a 15
17 percent premium in cash to Chicago's price. The plaintiffs
18 have pleaded a seller class during the period from the first
19 announcement to the second announcement, and they identify
20 three statements that they claim give rise to a claim under the
21 antifraud statutes rules and regulations. I'm quoting from
22 their brief: Plaintiff alleges that defendants issued two --
23 well, they say it's two, but you can divide that into two or
24 three -- two materially false and/or misleading statements, one
25 by Mr. Gooch, who was the chairman of GFI, and that statement

1 was that GFI's board had had a goal since GFI went public to
2 optimize GFI's value for stockholders and "that this
3 transaction represents a singular and unique opportunity to
4 return value."

5 The other statement is a statement by Colin Heffron,
6 the other individual defendant, who was president of GFI, that
7 this transaction unlocks the substantial value of our Trayport
8 and FENICS Technologies businesses. And that's it. There are
9 118 paragraphs, 48 pages, and two or three, if you will,
10 statements. So compared to some 10b-5 pleadings, I think we
11 have a fairly clear idea of what it is we're dealing with.

12 The claim comes down to the idea that the statements
13 about the CME merger agreement, at a time when it had been
14 signed but not yet accomplished, the merger hadn't been
15 consummated, that that was a singular and unique opportunity to
16 return value to shareholders and Mr. Heffron's statement that
17 it would unlock the value of two particular business units and
18 that management had had a goal over the years since they went
19 public of optimizing GFI's value. To make perhaps an obvious
20 point, this is not a case about accounting or financial fraud
21 or a business that was run or had a business model that was
22 inherently deceptive or fraudulent. It's not a case in which
23 shareholders were hurt because management told them things were
24 better than they were and at some point later it turned out
25 they weren't that good.

1 THE COURT: How is this case different from Virginia
2 Bankshares?

3 MR. ROWE: Virginia Bankshares is a case where
4 specific representations were made. They were in the form,
5 yes, of an opinion, in particular, a fairness opinion, by the
6 investment bankers, and as Judge Kaplan recently had the
7 opportunity to observe in the City of Westland case in this
8 court in September, an investment banker's fairness opinion is
9 a term of art and is something that carries with it all the
10 indicia that people should rely on it. It is something that
11 the company hires an investment banker to deliver. The
12 investment banker is expected to follow, as Judge Kaplan said,
13 a series of generally accepted investment banking valuation
14 principles, the same way an accountant when delivering an
15 opinion on a set of statements is expected to follow GAAP.

16 THE COURT: But isn't an executive's opinion that a
17 transaction is unique in returning value to shareholders the
18 same as an executive's opinion that a transaction is fair or
19 high?

20 MR. ROWE: I don't think so, your Honor, for the
21 following reasons: No. 1, not every expression of opinion is
22 something that shareholders can reasonably rely on. The Second
23 Circuit's cases that throw out claims because the opinions
24 expressed are too vague -- for example, the case where the
25 chairman of the board on a conference call said that the merger

1 that they were entering into was a grand slam home run and it
2 turned out to be something that two or three months later
3 looked like the opposite of a grand slam home run -- in other
4 words, it was in some sense objectively false or it turned out
5 to be, the Second Circuit -- I'm sorry, this Court agreed that
6 that statement was just not the kind of statement that
7 shareholders rely on, very different, I think, from a statement
8 that this investment bank has opined that it's fair or for that
9 matter a statement that is in some sense quantitative, like
10 it's high. And all these Second Circuit cases we cite, the ECA
11 case, the San Leandro case, Lasker case, postdate Virginia
12 Bankshares, sometimes by 10 and by 15 years. If Virginia
13 Bankshares meant that any expression of opinion, however broad,
14 however vague, however not touching a verifiable, quantifiable
15 issue, was actionable, it's difficult to see how those three
16 Second Circuit opinions could have come out the way they came
17 out and all the district court opinions following them, so
18 there has to be a line between the view that Virginia
19 Bankshares says that any expression of opinion by a corporate
20 executive, even if it's saying something like "I just think
21 this transaction is the greatest, it's a grand slam home run,
22 it's singular, it's unique, it's an opportunity," the point is
23 those things don't really tell shareholders anything other than
24 that management is enthusiastic about the transaction.

25 But there's another answer. The other answer is the

1 plaintiffs have not identified what's fraudulent about a
2 statement that this is a singular and unique opportunity. It
3 certainly was an opportunity. It certainly was singular in the
4 sense that only one company had gotten to the stage of signing
5 a merger agreement. It was unique in the sense that the merger
6 consideration were shares of a specific company, shares of the
7 Chicago Mercantile Exchange. No other company could offer GFI
8 Group shares of the Chicago Mercantile Exchange. It was
9 unique. They have to go further.

10 THE COURT: What about reading it in context with the
11 other portion of the statement, optimizing GFI's value for
12 shareholders, for stockholders?

13 MR. ROWE: Optimizing GFI's value for stockholders
14 goes to whether or not a process was followed that is a typical
15 or tailored process to accomplish a transaction that was doable
16 and that was available and that increased shareholder value,
17 with the understanding, as plaintiffs concede on pages 18 and
18 19 of their brief, because we raised this in a sense in our
19 opening brief, if the plaintiffs had an argument that the
20 statements here were a kind of guarantee or a representation
21 that this was the highest price shareholders could expect to
22 receive, then I could understand the claim. But they admit two
23 things. One, they admit, or they concede in their brief, pages
24 18 to 19, that they are not arguing this case on the theory
25 that these statements amount to a representation this was the

1 best price, that it was the highest possible price, and they
2 also admit or concede that the entire world knows, they say
3 that it is obvious to everyone, that a higher bid might
4 materialize. So the very thing they're complaining about here,
5 and this goes to loss causation, which I think is a very
6 interesting point we make, because you could think that they
7 have pleaded a case about the falsity or misrepresentation
8 nature of the statements and yet if they don't have a loss
9 causation theory that passes muster, the complaint still fails,
10 because loss causation is an independent element.

11 And the reason why they haven't met the loss causation
12 leg of the set of elements they must plead, and that's a
13 Supreme Court concept that comes from Dura Pharmaceuticals v.
14 Broudo and in the Second Circuit as well, the idea is that
15 there has to have been something concealed, and when the thing
16 that was concealed wasn't revealed, damage occurred, damage
17 usually being the stock price goes down or in the case here
18 with the seller class the stock price goes up. So there has to
19 be a link between what it is they're saying was false and the
20 damage to shareholders. That link doesn't exist here, and it's
21 our position, your Honor, that they basically conceded, and
22 it's conceded in two ways: No. 1, it's conceded because they
23 say on page 19 that it was always obvious to all investors that
24 a higher bid might be made.

25 Well, the thing that they say is the corrective

1 disclosure here is not a corrective disclosure by any of the
2 executives that they in fact were relying on when they said it
3 was a unique opportunity. The thing they say was a corrective
4 disclosure was a disclosure by BGC, a third party, and there's
5 no allegation, and there can't be, that the GFI people who made
6 the statement knew that BGC was going to do something that was
7 going to cost BGC a lot of time and evidence and money, which
8 was to top a bid, and the topping bid is what caused the damage
9 here.

10 It's the fact that on September 9, BGC announced that
11 it would offer 15 percent more than Chicago Mercantile which
12 had already offered a 46 percent premium. The fact that BGC
13 was going to make that offer is what caused the damage, what
14 caused the alleged loss. But the plaintiffs concede on page 19
15 that the market always knew that essentially investors are
16 presumed to know that there can be a topping bid. Why is this?
17 Because a merger is not like a sale of a building or something
18 where the company signs a contract and it's obligated to sell.
19 When you sign a merger agreement, there's a period of time,
20 usually three to six months, when you have to go out and get
21 stockholder approval on the basis of a detailed proxy
22 statement, and in the course of the effort to get stockholder
23 approval at the vote, it is not at all uncommon, and it is
24 always possible, that someone will make a topping bid, and
25 that's just what happened here. And the vote on the Chicago

1 Mercantile transaction, it happened and the shareholders turned
2 it down because a higher bid had been made, but the plaintiffs
3 have conceded that that is something that investors always knew
4 about.

5 So there are two things going on with loss causation.
6 On the one hand, we know that a topping bid can always be made,
7 and that's what caused the loss here. On the other hand, the
8 fact that a topping bid would in fact be made here was never
9 concealed, not for one minute, because it was not a fact in
10 existence. There had been no BGC decision to top that bid when
11 this July 30 announcement was made, and certainly GFI was not
12 in a position to know about it if one had. It was only when
13 this third party came into the market. The phrase Dura uses is
14 "when truth comes into the market," and the truth that came
15 into the market was a new piece of truth. And the case law is
16 very clear.

17 THE COURT: Don't the plaintiffs plead that that truth
18 would have come into the market back in July?

19 MR. ROWE: No, I don't think they do, your Honor.
20 What they're referring to when they say that there was BGC
21 interest was that BGC indicated without naming a price, without
22 remotely saying they would take the step of doing a hostile
23 offer, BGC indicated that it wanted to have conversations. It
24 wanted to have a dialogue. No price was mentioned, no
25 commitment was made. That is not at all the same thing as

1 saying, We're going to commence a tender offer in cash at
2 \$5.25. And it's that that moved the market and caused the
3 loss, so we believe that there's no allegation of anything that
4 was concealed that then later came into the market. What came
5 into the market and moved the market and caused the loss was a
6 decision made later on by BGC after seeing the Chicago
7 Mercantile price that they were willing to beat the Chicago
8 Mercantile price. And the case law is very clear that you
9 cannot presume loss causation based on extrinsic market
10 factors. The loss causation has to stem from the revelation of
11 a previously known, disclosed fact and there has to be a direct
12 link between the fact that was concealed, the fact that was
13 disclosed, and that has to be what causes the loss.

14 THE COURT: Isn't loss causation oftentimes a fact
15 issue?

16 MR. ROWE: I suppose it can be a fact issue.

17 THE COURT: Isn't it raised most of the time on
18 summary judgment and rarely on motions to dismiss?

19 MR. ROWE: Similarly, your Honor, the plaintiffs make
20 the comment that a number of our arguments, for example,
21 relating to materiality, are mixed questions of law and fact,
22 and there may be indeed some cases where loss causation is a
23 mixed question of law and fact. Here, the reason I don't think
24 it is is because most cases are cases where the corrective
25 disclosure is made by the defendant. In other words, you're

1 looking at a statement by a company and then later on that
2 company makes a disclosure that something happened. And here,
3 we're dealing with something very different.

4 My colleagues have pointed out that Judge Kaplan's
5 recent case, the City of Westland case, which addressed loss
6 causation, was a motion to dismiss. I'm not saying every loss
7 causation claim is appropriate.

8 THE COURT: You rely in your brief on Gordon Partners
9 v. Blumenthal, right, for your loss causation argument?

10 MR. ROWE: It's one of the cases, your Honor.

11 THE COURT: It's the only case in your moving brief,
12 and you made a reference to Dura in your reply brief, but you
13 also relied on Gordon Partners in your reply brief. Tell me if
14 I've missed something.

15 MR. ROWE: No, your Honor.

16 THE COURT: First of all, Gordon Partners v.
17 Blumenthal is a summary judgment case, right?

18 MR. ROWE: Yes.

19 THE COURT: Not a motion to dismiss.

20 MR. ROWE: Yes.

21 THE COURT: And I just would wonder why you would
22 offer a summary order from the Federal Appendix as your
23 principal authority for this argument on loss causation without
24 making any reference to the Second Circuit's decisions in
25 Carpenters Pension, this year, and Loreley Financing, and

1 Omnicom, all subsequent opinions of the Second Circuit, that
2 are directly contrary to the summary order that you rely upon
3 for your loss causation argument, which I think you misstate
4 the law. So tell me why you put that before the Court, if you
5 can.

6 MR. ROWE: Your Honor, I don't have any response to
7 your Honor's comments other than to say that we cited Gordon --

8 THE COURT: Then I will express my shock that a firm
9 of your caliber, with all the resources that you have, would
10 center an argument around a summary order that is squarely not
11 the law in this circuit. It's squarely not the law, and I
12 think you have a duty to the Court to provide the Court with
13 the authorities as you understand them, and Gordon Partners is
14 not the authority in this court. The authority is directly to
15 the contrary.

16 MR. ROWE: Your Honor, I apologize for that.

17 THE COURT: Of course, "I'm sorry" are, as one
18 commentator once said, the saddest words in the English
19 lexicon.

20 MR. ROWE: We based our point on the most general view
21 of Dura, and I apologize again if we relied on a case that --

22 THE COURT: You relied on a summary order.

23 MR. ROWE: -- we shouldn't have.

24 THE COURT: There are written opinions by remarkable
25 Second Circuit judges, this year, that aren't mentioned. Let

me just make the point to you. No mention of Judge Berman's opinion in Carpenters Pension where he was sitting by designation with a very thoughtful panel; Judge Winters' opinion in Omnicom, affirming my earlier decision in Omnicom; or Judge Calabresi's lengthy study of loss causation in Loreley Financing. Judge Calabresi's opinion and Judge Berman's opinion sitting by designation are both 2015, and I think Omnicom was back in 2010. So to dig out a summary order from the Federal Appendix in 2008 is to lose credibility with the Court. Say nothing more on loss causation, because that's a total loser, and I do find that it was remarkable when you started your remarks that there were various points you were making to challenge this complaint. The first thing you mentioned was loss causation. Maybe I should have jumped on you then.

What else do you have on puffery and --

MR. ROWE: Santa Fe, your Honor.

THE COURT: Right, and Santa Fe, because what you had on loss causation, that's puffery. OK?

MR. ROWE: Your Honor, on Santa Fe and puffery, I think I've addressed puffery to some extent --

THE COURT: Your Santa Fe argument really depends upon the Court finding that the statements are puffery. Doesn't it? I mean, if I find that they're not, if I were to find that the statements are not puffery, doesn't your Santa Fe argument

1 dissolve, because it's not a breach of fiduciary duty; there
2 are statements? That's clearly a 10b-5 claim.

3 MR. ROWE: Your Honor, Santa Fe is an interesting,
4 doctrine as reflected in part by the Field v. Trump case,
5 because I think there is a recognition that there is or there
6 can be an overlap, if you will, between the point that what the
7 plaintiffs are really trying to do is to circumvent and plead
8 in federal clothes a state law cause of action for fiduciary
9 duty, which is the fundamental thing that Santa Fe in 1977 was
10 trying to draw a line about. And yes, sometimes the facts and
11 sometimes statements overlap, but what I would say is that if
12 you read this 48-page complaint, 115 paragraphs, and you
13 compare the amount of effort and the use of the allegations
14 that go to fiduciary duty issues, how the sale process was
15 conducted, what motives were, I mean, the point of Santa Fe and
16 the point of this circuit's antiseif-flagellation doctrine is
17 that you can't take a single innocuous statement and say that
18 it can be the basis of a federal claim because the defendants
19 had improper motives, those improper motives usually being some
20 effort to self-deal or entrench themselves or in some other way
21 misbehave.

22 And yes, in each case, the court has to make a
23 determination whether that is or is not in fact what the
24 plaintiffs are trying to do. But it seems to me an unusual
25 situation where such a large percentage of the pleading is

1 devoted to things that are basically the background of the
2 merger transaction and that go to breaches of fiduciary duty
3 and where the plaintiffs say that the problem with the
4 statements made by the individual defendants is that there was
5 an implicit representation they had upheld their fiduciary
6 duty. When plaintiffs choose to plead that way, and of course,
7 all the information comes from a companion proceeding in state
8 court under state law, it seems to us that you're dealing with
9 the core situation that Santa Fe was intended to address, which
10 is, Can plaintiffs plead around the intention of the Supreme
11 Court in Santa Fe by saying, All right, here's the statement,
12 but what you didn't say was it's the product of fiduciary
13 breach. So that's why we think Santa Fe is relevant here, your
14 Honor.

15 THE COURT: Anything further?

16 MR. ROWE: No, your Honor. Thank you.

17 THE COURT: What's the status of the Delaware matter?

18 MR. ROWE: The Delaware case was heavily litigated.

19 THE COURT: I know. The last time I looked, there's a
20 notice of a proposed -- there's a motion for a settlement,
21 right?

22 MR. ROWE: That's correct, and the court heard that
23 motion last Tuesday, November 24, and suggested -- there are
24 various ways to characterize what he said, but among other
25 things he suggested a change in the class period, and the

1 defendants and the plaintiffs are discussing how to accomplish
2 that and to go back before that court.

3 THE COURT: All right. Thank you.

4 MR. ROWE: Thank you, your Honor.

5 THE COURT: Mr. Zwick.

6 MR. ZWICK: Your Honor, I don't have a lot to say,
7 especially about loss causation, other than to point out that
8 your Honor's SLM decision makes clear that it's a modest
9 pleading requirement, and I don't think there's any doubt that
10 we've met it.

11 THE COURT: What facts in the complaint suggest that
12 Heffron's statement that the CME transaction unlocked value was
13 false?

14 MR. ZWICK: That statement was false, your Honor,
15 because if I tell you that I'm going to sell an asset that you
16 own and I get you \$5 when the asset is worth \$10, I didn't give
17 you \$5 in value, I didn't unlock any value, I deprived you of
18 value.

19 THE COURT: No, but if in your example my asset is
20 worth \$3 and you tell me that you're going to unlock value and
21 I'm going to get \$5, isn't that literally true?

22 MR. ZWICK: No. It wasn't worth \$3, it was trading at
23 \$3. What the value of an asset is is what it will bring in a
24 sale. They undertook to do a merger, and, your Honor, I just
25 want to make clear we are not pleading a breach of fiduciary

1 duty saying they didn't get enough. We're saying they lied
2 about what they got and the process.

3 THE COURT: I understand all of that.

4 MR. ZWICK: Your Honor, the stock is trading at \$3.
5 They say, Look, we have this great offer, it's 4.55, singular
6 and unique opportunity, basically you're not going to do better
7 than this, when they knew from their own bankers that the
8 company had a value of at least 5.41 a share. The investment
9 bankers told them, If you sell this company properly, which is
10 to split up the IBD, which is the brokerage division, and
11 Trayport and FENICS, which is the software business, sell the
12 IBD to a competitor so that synergies are unlocked, you will
13 get more money for the whole company, way more than it's
14 trading at. So, your Honor, the fact that it was trading at \$3
15 and they got an offer for 4.55, internally you haven't heard a
16 word about that, internally they have documents and information
17 from their investment bankers that told them that the stock was
18 worth at least 5.41 a share when properly sold.

19 So back to my example, if I tell you that I'm going to
20 sell an asset of yours and I got a great deal, I got you \$5 of
21 value, but I know that the value in the asset is \$10, I haven't
22 gotten you \$5 in value, I've deprived you of \$5 in value. And,
23 your Honor, this case is not about a breach of fiduciary duty.
24 It's not about a failure to plead bad motives. It's about a
25 misrepresentation or omissions of material facts, facts that

1 were absolutely known to these defendants when they went out
2 and made the statement.

3 Your Honor, on July 30, when they chose to speak, they
4 didn't have to speak. They didn't have to editorialize. They
5 decided to characterize the merger.

6 THE COURT: Mr. Gooch's statement that it was a unique
7 opportunity sounds a lot like the statement in Rombach v.
8 Chang, the golf center acquisition case, in which Judge Jacobs
9 ultimately affirmed Sterling Johnson's decision finding that
10 that was puffery.

11 MR. ZWICK: Your Honor, the general rule is that these
12 materiality arguments can't be decided at a motion to dismiss
13 because each case is different and there are no magic words.
14 There's no list of kosher words for conveying a certain point
15 and words that you can't use. You've got to look at everything
16 in context. In the context of this case, the statements that
17 were made need to be viewed against the information that
18 defendants had which completely contradicted what they said,
19 and there was only one reason they did it, because they were
20 financially self-interested. I suspect that's why the scienter
21 argument was dropped. I don't think they want you to look at
22 the information that they had but didn't disclose to
23 shareholders. People who sold their stock after the
24 announcements were in the dark, in the dark about the Jeffries
25 opinion, in the dark about the calling off of the market check,

1 in the dark about the fact that they insisted on only doing a
2 transaction that would benefit themselves. Nobody knew any of
3 that until BGC came forward. And in fact when BGC came
4 forward, they said, We could pay you more because of synergies,
5 which is the fact that underlies our loss causation argument.
6 So the context, the specific information they had, your Honor,
7 the Bank of America case they cite, if I can read one paragraph
8 to you:

9 "Defendants also contend that both its representations
10 concerning its due diligence amounted to nonactionable
11 statements of opinion and broad generalizations that cannot be
12 a basis for shareholder reliance." And they rely on ECA, the
13 same case that defendants rely on here, but the court went on
14 to say, "But there is a difference between enthusiastic
15 statements amounting to general puffery and opinion-based
16 statements that are anchored in misrepresentations of existing
17 fact. The *sine qua non* securities fraud claim based on false
18 opinion is that defendants deliberately misrepresented a truly
19 held opinion."

20 Here, they not only misrepresented truly held
21 opinions, they didn't disclose facts. They knew from the
22 investment bankers that this company was worth more money and
23 that it would bring more money. The investment bankers
24 identified competing IBDs as being able to pay more money,
25 including BGC. They told them: Go out and sell this company

1 in parts. Sell the IBD to a competitor and you'll get more
2 money. Your Honor, if they had done that, if they had sold the
3 IBD to a competitor and achieved even a 5.41 price, people
4 would have had more money to go out and they could have bought
5 as much as CME stock as they want, so this argue about the
6 uniqueness of the CME stock, I don't even understand it. If
7 the total price had been what the investment bankers told them
8 and had people known when they were selling their stock that
9 investment bankers said, You're going to get more money if you
10 sell it the way we do, they were misled.

11 THE COURT: All right. Anything else?

12 MR. ZWICK: That's it. Thank you, your Honor.

13 THE COURT: Anything further, Mr. Rowe?

14 MR. ROWE: If I may, just briefly, your Honor. The
15 colloquy you just had was one which was something I addressed
16 briefly but would come back to, which is obviously there are
17 cases where a statement is made about whether or not a
18 company's policies are in compliance with law, about what a
19 company expects to do with respect to some contingent liability
20 claims, whether or not the company's difficulties in a certain
21 business area are about to come to an end. I'm just a little
22 bit free-associating with some of the things I remember from
23 the case law, but the statements here, and at the outset, I
24 focused on exactly how short the statements are and what they
25 actually say, words like "singular" and "unique," it's not even

1 so much that they're vague, it's also that the plaintiffs
2 haven't really said what's affirmatively false about them.
3 This was one transaction in the sense that it was singular. I
4 heard the comment that you could go out and buy Chicago Merc
5 stock, but the fact is the consideration in the merger was in a
6 unique form. And the fact that it unlocked value, that's not
7 the same as saying the highest value ever was achieved. Value
8 was clearly unlocked. That's all, your Honor.

9 THE COURT: Thank you for your arguments. Decision
10 reserved. Have a good holiday.

11 (Adjourned)
12
13
14
15
16
17
18
19
20
21
22
23
24
25